
By: **Senator Astle**
Introduced and read first time: February 25, 2004
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **State's Right of Recovery - Grant Programs - Exemption for Lease of**
3 **Federal Land**

4 FOR the purpose of exempting real property leased from the federal government from
5 the State's right to recover, under certain circumstances, certain funds
6 disbursed to certain community mental health, addiction, and developmental
7 disabilities facilities grant programs; exempting real property leased from the
8 federal government from the State's right, under certain circumstances, to
9 create a lien against real property for certain community mental health,
10 addiction, and developmental disabilities facilities grant programs; making
11 conforming changes; and generally relating to exempting property leased from
12 the federal government from the State's right to recover funds disbursed to
13 grant programs or to create a lien against the property.

14 BY repealing and reenacting, with amendments,
15 Article - Health - General
16 Section 24-606
17 Annotated Code of Maryland
18 (2000 Replacement Volume and 2003 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Health - General**

22 24-606.

23 (a) In accordance with this section, the State:

24 (1) [shall] SHALL have the right to recover funds disbursed under this
25 subtitle; AND

26 (2) MAY NOT:

27 (I) RECOVER FUNDS DISBURSED UNDER THIS SUBTITLE FROM
28 THE FEDERAL GOVERNMENT IF THE FEDERAL GOVERNMENT IS THE LESSOR OF

1 REAL PROPERTY ON WHICH A PROJECT IS CONSTRUCTED OR A FACILITY IS
2 OPERATED; OR

3 (II) CREATE A LIEN AGAINST REAL PROPERTY THAT IS LEASED
4 FROM THE FEDERAL GOVERNMENT ON WHICH A PROJECT IS CONSTRUCTED OR A
5 FACILITY IS OPERATED.

6 (b) [In] SUBJECT TO SUBSECTION (A)(2) OF THIS SECTION, IN the event of
7 failure to complete a project or failure to commence operation of a facility, the State
8 may recover from the recipient of the funds disbursed for the project or facility or the
9 owner of the property an amount equal to the amount of State funds disbursed for the
10 project, together with all costs and reasonable attorneys' fees incurred by the State in
11 the recovery proceedings.

12 (c) [If,] SUBJECT TO SUBSECTION (A)(2) OF THIS SECTION, IF, within 30 years
13 after completion of a project, a community mental health facility, addiction facility, or
14 developmental disabilities facility with respect to which funds have been paid under
15 this subtitle is sold or transferred to any person, agency, or organization that would
16 not qualify as an applicant under this subtitle, or that is not approved as a transferee
17 by the Board of Public Works, or if, within the same period, a community mental
18 health facility, addiction facility, or developmental disabilities facility ceases to be a
19 "facility" as defined in this subtitle, then the State may recover from either the
20 transferor or transferee or, in the case of a community mental health facility,
21 addiction facility, or developmental disabilities facility that has ceased to be a
22 "facility" as defined in this subtitle, from the owner, an amount bearing the same
23 ratio to the then current fair market value of so much of the property as constituted
24 an approved project as the amount of the State participation bore to the total eligible
25 cost of the approved project, together with all costs and reasonable attorneys' fees
26 incurred by the State in the recovery proceedings.

27 (d) (1) The Department shall cause notice of the State's right of recovery to
28 be recorded in the land records of the county or Baltimore City in which the property
29 is located before the State makes any funds available for the approved project.

30 (2) The recording of the notice shall not create any lien against the
31 property; however, SUBJECT TO SUBSECTION (A)(2) OF THIS SECTION, it shall
32 constitute notice to any potential transferee, potential creditor, or other interested
33 party of the possibility that the State may obtain a lien under this subtitle.

34 (e) (1) In the event of a failure to complete the project or commence
35 operations of the facility as described in subsection (b) of this section, or in the event
36 of an alleged sale or transfer as described in subsection (c) of this section, or in the
37 event that a property is alleged to have ceased to be a "facility" as defined in this
38 subtitle, the Secretary of the Board of Public Works may authorize the Department to
39 file, in the circuit court of the county or Baltimore City in which the property is
40 located, a claim under this subtitle (styled as a civil action against the owner of the
41 property and any other interested parties, including any transferor that the State
42 wishes to make a party), together with a sworn affidavit stating facts on which the

1 allegations of default are based, as well as a detailed justification of the amount
2 claimed.

3 (2) If the circuit court determines from the State's initial filing that
4 there is probable cause to believe that a default has occurred, the court shall
5 authorize a temporary lien on the property, in the amount of the State's claim, plus
6 any additional amount estimated to be necessary to cover the costs and reasonable
7 attorney's fees incurred by the State, or other amounts as the court determines to be
8 reasonable, pending full determination of the State's claim.

9 (3) The temporary lien takes effect on the date of the court's
10 authorization if the State records a notice of temporary lien in the land records of the
11 county or Baltimore City in which the property is located within 10 days thereafter;
12 otherwise, the temporary lien takes effect on the date a notice of temporary lien is
13 recorded. While the temporary lien is in effect, neither the owner nor any person who
14 acquired an interest in the property after the State first made funds available in
15 connection with the property under this subtitle may take any action that would
16 affect the title to the property or institute any proceedings to enforce a security
17 interest or other similar rights in the property, without the prior written consent of
18 the State.

19 (4) The owner of the property or any other interested party may obtain
20 release of this temporary lien at any time by filing with the court a bond securing the
21 payment in full of the State's claim any additional amount necessary to cover the
22 costs and reasonable attorneys' fees incurred by the State. The owner or other
23 interested party may cause the release to be recorded in the land records.

24 (f) (1) Proceedings to determine the State's right to recover and the amount
25 of its recovery under this subtitle shall have priority over other civil proceedings in
26 the circuit courts.

27 (2) At the conclusion of full adversary proceedings on the issue of default
28 and on any disputes over the amount of the State's recovery, the circuit court shall, if
29 it finds that a default has occurred, issue a final judgment for the amount it finds to
30 be recoverable by the State. All parties involved in the default, including in every case
31 the owner of the property, shall be held jointly and severally liable to the State for the
32 amount of the judgment. This amount, if it remains unpaid after the expiration of 30
33 days following the court's final order, shall be a lien on the property, superior (except
34 as the State may by written subordination agreement provide otherwise) to the lien or
35 other interest of any mortgagee, pledgee, purchaser, or judgment creditor whose
36 interest became perfected against third persons after the State first made funds
37 available in connection with the property under this subtitle.

38 (3) This lien takes effect on the 31st day following the court's final order
39 if the State records a notice of lien in the land records of the county or Baltimore City
40 in which the property is located on or before the 41st day following the final order;
41 otherwise, the lien takes effect on the date a notice of lien is recorded. At the time this
42 lien takes effect, any temporary lien then in effect shall be automatically and fully

1 released, and the recorded notice of this lien shall constitute notice of the release of
2 the temporary lien.

3 (4) This lien may be enforced and foreclosed in accordance with the
4 procedures prescribed in the Maryland Rules, except that neither the State nor any
5 agent appointed by the State to sell the property need file a bond.

6 (5) The owner or any other interested party may obtain release of this
7 lien at any time by paying the State the full amount of the judgment rendered by the
8 circuit court, together with interest from the date of judgment. On payment in full,
9 the State shall cause a release to be recorded in the land records.

10 (6) If the circuit court finds that there has been no default or if the full
11 amount of the court's judgment is paid to the State within 30 days after the court's
12 final order, any temporary lien then in effect shall be released immediately and the
13 State shall cause a release to be recorded in the land records.

14 (g) (1) All funds recovered as a result of the State's right of recovery shall be
15 deposited in the Annuity Bond Fund and applied to the debt service requirements of
16 the State.

17 (2) The Board of Public Works may waive the State's right of recovery if
18 the Board determines that there is good cause for releasing the transferor, transferee,
19 or owner from this obligation.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2004.